

Hardware Terms



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1. How these Service Terms work

- 1.1 Terms defined in the Reseller Agreement and/or the Terms and Conditions shall have the same meaning when used in these Service Terms.
- 1.2 In these Service Terms “Goods” means any hardware or other tangible goods to be supplied by us pursuant to the Agreement.
- 1.3 In the Reseller Agreement and the Terms and Conditions the definitions of “Prices” and “Charges” shall be amended so as to apply to Goods as well as Services.
- 1.4 In the Reseller Agreement clauses 3.1 and 3.4 shall be amended so as to apply to Goods as well as Services.
- 1.5 In the Terms and Conditions:
 - (a) clauses 1.2 and 2.1; and
 - (b) the definition of “Order”;

shall be amended so as to apply to Goods as well as Services

2. Goods

- 2.1 Title to the Goods (the tangible hardware that you purchase through us) shall not pass to you until we have received payment in full (in cash or cleared funds) for the Goods.
- 2.2 Until title to the Goods has passed to you, you shall:
 - (a) hold the Goods on a fiduciary basis as our bailee;
 - (b) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify us immediately if you become subject to any Insolvency Event; and
 - (f) give us such information relating to the Goods as we may require from time to time,

but you may resell or use the Goods in the ordinary course of your business.

- 2.3 If before title to the Goods passes to you, you become subject to any Insolvency Event, or we reasonably believe that any such event is about to happen and notify you accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy of ours, we may at any time require you to deliver up the Goods and, if you fail to do so promptly, enter any premises of yours or of any third party where the Goods are stored in order to recover them.

- 2.4 Subject to clause 4 below, Goods are sold as non-returnable and must be paid for in full unless otherwise expressly agreed in writing with us.
- 2.5 If, following Acceptance of any order, we are unable to obtain any particular Goods because they have been discontinued by the manufacturer or our usual suppliers then we may on written notice to you cancel the relevant order (to the extent it relates to such Goods) without any liability to you. We will use our reasonable endeavours to offer you substitute Goods with a similar or higher specification.

3. Delivery

- 3.1 Goods will be delivered to your billing address unless you specify an alternative address at the time of order.
- 3.2 If the Goods are received incomplete, are the wrong goods or are damaged when you open them, you must tell us within 3 days of receipt.
- 3.3 We will communicate to you in writing the expected delivery date where this is available to us. Should an order not arrive within 3 days of the expected delivery date you should notify us in writing or by telephone to your account representative.
- 3.4 If the delivery company are unable to deliver an item due to your act or omission then you will be liable to us for any associated charges we incur.
- 3.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 3.6 If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or to take delivery of the Goods.

4. Warranty and Liability

- 4.1 You warrant and represent that the Goods are suitable for your requirements.
- 4.2 We warrant that on delivery, and for a period of 12 months from the date of delivery ("Warranty Period"), the Goods shall:
 - (a) conform in all material respects with any applicable specification; and
 - (b) be free from material defects in design, material and workmanship.
- 4.3 Subject to clause 4.4, if:
 - (a) you give notice in writing to us during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.2;
 - (b) we are given a reasonable opportunity of examining such Goods; and
 - (c) you (if asked to do so by us) return such Goods to our place of business at (or such other address as we may request) at your cost;

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 4.4 We shall not be liable for Goods' failure to comply with the warranty set out in clause 4.2 in any of the following events:
- (a) you make any further use of such Goods after giving notice in accordance with clause 4.3;
 - (b) the defect arises because you have failed to follow our or the manufacturer's oral or written instructions or guidance as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) you alter or repair such Goods without our written consent;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 4.5 Clause 4.3 sets out Your sole and exclusive remedy and Our entire liability for any failure of the Goods to comply with the warranty set out at clause 4.2.
- 4.6 Clause 19.4 of the Terms and Conditions and clause 24.4 of the Reseller Agreement shall only apply to Services.
- 4.7 Subject to clause 4.8, Our total Liability in respect of Goods shall be limited to the price of the Goods which are the subject of the claim.
- 4.8 We do not exclude or limit our Liability for:
- (a) death or personal injury to persons resulting from our negligence;
 - (b) any Liability which cannot be excluded or limited under applicable law, including fraud.
- 4.9 To the fullest extent permitted by applicable law the Goods are provided to you without any express, implied, or statutory representation, warranty or condition of any kind including but not limited to any warranty or condition of quality or fitness for a particular purpose that the Goods will meet your requirements or the Goods will work in combination with any software or hardware.